

EXHIBIT 1



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W.
Washington, DC 20530*

September 2, 2022

VIA E-MAIL

Tara Tavernia, Esq.
Latham & Watkins LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004-1304

Re: Clean Team Documents – *United States et al. v. American Airlines Group Inc. et al.*, No. 1:21-cv-11558 (D. Mass.)

Dear Tara:

I write in response to your June 24, 2022 and August 9, 2022 letters. These letters concern documents relating to the Clean Team’s consideration of differences in worlds with and without the NEA, i.e., potential counterfactuals for evaluating the effects of the NEA (the “Clean Team Documents”). American has selectively withheld all or portions of many of the Clean Team documents. But as I explained in my June 9 letter, American has touted the reliability of the Clean Team’s work by claiming that it was done in the ordinary course using ordinary network-planning principles. To the extent those representations are true, no privilege attaches to the Clean Team’s work considering counterfactual NEA scenarios. Further, because American and its experts have affirmatively relied on one of the scenarios developed by the Clean Team to support their defense in this litigation, American cannot now shield documents considering other scenarios.

Events since your June 24 response to my June 9 letter further underscore that American is inappropriately withholding documents relating to the Clean Team’s consideration of counterfactuals. Both Dr. Israel’s report, submitted on July 11, 2020, and his deposition, taken on August 22, 2020, make clear that he is relying on and vouching for one counterfactual scenario developed by the Clean Team—namely, a scenario comparing a schedule based on actual flying in 2019 (the “2019 Base Scenario”) with a schedule developed by the Clean Team to reflect what American and JetBlue could fly at the NEA airports in 2023 under the NEA (the “2023 NEA Scenario”). The 2023 NEA Scenario reflected, among other things, changes to American’s and JetBlue’s fleets as of 2023.

In opining that the comparison of the 2019 Base Scenario and the 2023 NEA Scenario is apples-to-apples, Dr. Israel indicates in his report that he is relying on his contemporaneous communications with the Clean Team in which they expressed their personal belief that this scenario was an apples-to-apples comparison.¹ Indeed, Dr. Israel goes so far as to dismiss one of the alternative counterfactuals considered by the Clean Team—the one that prompted American’s Clean Team members to observe that the “regulatory case for this domestic JV with ATI doesn’t exist”²—as merely an “internal check.”³ Further, Dr. Israel acknowledged in his deposition that he asked questions about alternative counterfactuals that the Clean Team could consider.⁴

Given Dr. Israel’s reliance on one counterfactual developed by the Clean Team, evaluation of Dr. Israel’s claims about the purpose and reliability of what the Clean Team did requires full disclosure of the potential counterfactuals that the Clean Team considered, including production of all such documents or communications among American Clean Team members, or among American and JetBlue Clean Team members, or among members of the Clean Team with Compass.

Your clawback of PX-0270 in your August 9 letter simply highlights the untenable position that American has taken. American has redacted a portion of the subject line of PX-0270 that relates to a June 3, 2020 meeting between members of American’s Clean Team and Compass so as to shield even the general subject matter of the meeting from disclosure.⁵

In Appendix A to this letter, Plaintiffs have identified a limited number of additional documents that appear, based on their date or other indicia, to fall into the category of documents relating to counterfactuals considered by the Clean Team. Plaintiffs request that American produce the documents identified in Appendix A no later than Monday, September 12. Plaintiffs also request that American inform us whether they plan to do so by Wednesday, September 7, so that Plaintiffs can promptly seek an order compelling production of these documents, if necessary.

Sincerely,

/s/ James L. Moore

James L. Moore
Trial Attorney
U.S. Department of Justice
Antitrust Division

¹ See, e.g., Israel Report at ¶ 102.

² PX-0372 (at AA-NEA-03110063).

³ Israel Report at ¶ 81 n.98.

⁴ See, e.g., Israel Aug. 22, 2020 Dep. Tr. at 72:12-20 (questions regarding Clean Team running a scenario with and without the additional aircraft); *id.* at 75:18-75:19 (questions relating to running different years); *id.* at 190:5-191:5 (describing his conversations with the Clean Team about a scenario that assumed no fleet growth); *id.* at 193:21-194:8 (explaining that he had conversations with the Clean Team about how to decompose things); *id.* at 204:17-205:11 (describing conversation with the Clean Team about looking at standalone fleets for 2023).

⁵ Plaintiffs responded to that clawback on August 11, requesting that American either withdraw its privilege claim or explain the basis for the claim. American has not yet responded, and Plaintiffs request that American do so promptly.

Appendix A

American Litigation Log

AA_Priv_10752 (May 20, 2020) -- Redacted
AA_Priv_13971 (May 27, 2020) -- Withheld
AA_Priv_13972 (May 26, 2020) -- Withheld
AA_Priv_13976 (May 27, 2020) -- Withheld
AA_Priv_13977 (May 27, 2020) -- Withheld
AA_Priv_13978 (May 27, 2020) -- Withheld
AA_Priv_18822 (June 2, 2020) -- Withheld
AA_Priv_18823 (June 2, 2020) -- Withheld

American CID Log

Priv_03274 (May 19, 2020) -- Withheld
Priv_03288 (May 20, 2020) -- Withheld
Priv_03358 (May 20, 2020) -- Withheld
Priv_03577 (May 29, 2020) -- Withheld
Priv_03593 (May 20, 2020) -- Withheld
Priv_03917 (May 20, 2020) -- Withheld
Priv_03931 (May 22, 2020) -- Withheld
Priv_08050 (May 25, 2020) -- Withheld
Priv_08126 (May 25, 2020) -- Withheld
Priv_08197 (May 26, 2020) -- Withheld
Priv_08938 (June 2, 2020) -- Withheld
Priv_08946 (June 2, 2020) -- Withheld
Priv_09723 (June 2, 2020) -- Withheld
Priv_09768 (June 2, 2020) -- Withheld
Priv_10365 (May 20, 2020) -- Withheld
Priv_10366 (May 20, 2020) -- Withheld
Priv_10674 (May 29, 2020) -- Withheld
Priv_10683 (June 1, 2020) -- Withheld
Priv_10684 (May 29, 2020) -- Withheld
Priv_10699 (May 29, 2020) -- Withheld
Priv_10776 (June 3, 2020) -- Withheld
Priv_10781 (June 3, 2020) -- Withheld
Priv_11592 (May 29, 2020) -- Withheld
Priv_12039 (May 21, 2020) -- Withheld